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10/682,152	10/09/2003	Fredrick J. Landram	TELNP0201US	8207

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Kenneth W. Fafrak  
Renner, Otto, Boisselle & Sklar, LLP  
Nineteenth Floor  
1621 Euclid Avenue  
Cleveland, OH 44115-2191

EXAMINER
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BANGACHON, WILLIAM L

ART UNIT	PAPER NUMBER
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2612

MAIL DATE	DELIVERY MODE
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05/17/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

SK

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/682,152	LANDRAM ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	William L. Bangachon	2612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 May 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12, 14-42 and 44-62 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14-42 and 44-62 is/are rejected.
- 7) ☒ Claim(s) 29-42 and 44-62 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) ✓
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☒ Other: Examiner comments.

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments with respect to claims 1-12, 14-42 and 44-62 have been considered but are moot in view of the new ground(s) of rejection. Further, applicant's arguments have been fully considered but they are not persuasive.

The Examiner respectfully traverses applicant's argument that McGregor does not teach or suggest customizing operation of the selected mobile device to preset preferences of the at least one user, as recited in claims 1 and 29 [see Remarks, page 10, 5<sup>th</sup> paragraph] have been fully considered but are moot in view of the new grounds of rejection. Further, the Examiner respectfully traverses applicant's argument that McGregor does not teach or suggest customizing operation of the selected mobile device to preset preferences of the at least one user, because the system of McGregor has sufficient flexibility to be configured according to the requirements of the user {see McGregor, paragraph 0105}, such as limiting the initial number of calls, programming the phone to lock upon reading a predetermined dollar limit or upon reaching a certain date {see McGregor, paragraph 0112}.

In response to applicant's argument that McGregor et al has not been shown to teach or suggest granting the user access to the secure area based on the identification code [page 11, 2<sup>nd</sup> paragraph], as evidenced by Bishop et al, the granting access to portable phones in the local sites (i.e. secure area) based on the phone identification code of McGregor et al, is broadly considered to be functionally equivalent to the

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claimed "granting the user access to the secure area based on an identification code" {see claim rejection below}.

In response to applicant's request that the Examiner produce authority that supports taking of Official Notice [see page 11, 4<sup>th</sup> paragraph], the Examiner hereby provides US Patent 6,114,960 to Hymel and included in the rejection of claims 14 and 44 {see claim rejection below}.

In response to applicant's argument that McGregor et al does not teach or suggest a host computer granting the user access to the secure area based on the identification code [page 12, 7<sup>th</sup> paragraph], the claims are broader than what applicant argues. In this case, the host computer granting access to portable phones in the local sites (i.e. secure area) based on the user's name, address, driver's license number (i.e. identification code) and/or phone identification code {see McGregor et al, paragraph 0082}, is broadly considered to be functionally equivalent to the claimed "host computer granting the user access to the secure area based on an identification code". Other than the rental, retail and service center locations where the portable phones are located, the phone cradle or boot 32, as shown in Figure 2, is also considered a secure area. It is considered a secure area because without the phone cradle, the portable phones cannot be programmed with phone id's and therefore access to the portable phones is not possible. Further, it is noted that the claims include language that suggests or makes optional (i.e. operatively configured to). Therefore, if the prior art is capable of performing the suggested function, then it meets the claim. As such, McGregor et al suggests that centralizing allows implementation of various security

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measures for the local sites {see McGregor et al, paragraph 0056, lines 3-7}, which would read on a secured area with door locks (not claimed) to secure the area. Some of these types of secured area are cited below.

Finally, in response to applicant's argument that the failure flag of McGregor et al have nothing to do with emitting an alarm when a user selects an inoperative mobile device [page 12, 2<sup>nd</sup> paragraph], the applicant is directed to paragraph 0065 of McGregor et al which states, "a failure flag message will prompt the rental operator to remove an inoperative mobile device for repair servicing" {see McGregor et al, paragraph 0065}. The failure flag message that prompts the rental operator is considered to be functionally equivalent to the claimed "emitting an alarm".

Based on the above, the rejection of claims 1-12, 14-42 and 44-62 is maintained in this Office action.

### Claim Objections

2. Claims 29-42 and 44-62 are objected to because of the following informalities:

It is noted that the clause **"operatively configured to"** or **"operative to"** or **"configured to"** has been used in claims 29-30, 34-35, 38-39, 41 and 59. The "operatively configure to" clause, which suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure, does not limit the scope of a claim or claim limitation. Other examples of such language that suggests or makes optional are "adapted to" or "capable of" clauses. See MPEP 2106. It has been held that the recitation that an element, which suggests of performing an action is

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not a positive limitation, but only requires the ability to do so. It does not constitute a limitation in any patentable sense. In re Hutchison, 69 USPQ 138. It is suggested to remove the clause "operatively configured to" to recite a positive limitation. Appropriate correction is required.

Claims 31-33, 36-37, 40, 42, 44-58 and 60-62 are dependent on objected claims and therefore objected to for the same reasons.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

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were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the Examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-12, 15-42 and 45-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2003/0008636 A1 {hereinafter 'McGregor et al'} in view of US Patent 4,951,308 {hereinafter 'Bishop et al'}.

Regarding claim 29, McGregor et al teach of a mobile device allocation system for securely allocating mobile devices to a plurality of users, comprising:

at least one system backbone, such as a modem link or satellite link described in paragraph 0057, 0093 and 0104. Also see Figures 2 and 9;

at least one host computer, such as such as the central processing unit 14 shown in Figure 1 or a personal computer 42 shown in Figure 2, coupled to the system backbone; and

a plurality of portable phones 30 (i.e. claimed plurality of mobile devices) shown in Figure 2, operatively configured to communicate to the host computer 14 or personal computer 42 through the modem or satellite link,

wherein the plurality of portable phones 30 are initially stored in an inoperative state (i.e. off state or lock state), and the at least one central processing unit 14 or personal computer 42 and a selected portable phone 30 are operatively configured to

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place the selected portable phones 30 in an operative state based upon an identification code {see McGregor, paragraph 0082}. Also, see the different phone identification codes used in paragraphs 0106-0107 and paragraph 0133 regarding how the phone identification code, such as password, MIN or ESN is entered. Although the phone rental facilities of McGregor et al do not disclose a phone identification code that uniquely identifies a user, Bishop et al teach that such limitations are conventional in automated vending of cellular phones and would have been obvious in the system of McGregor et al, to one of ordinary skill in the art. Bishop et al, in the same field of endeavor, teach of a secured automated vending machine 10 comprised of a cabinet accessible through locked doors {see Bishop et al, column 4, lines 27-28}, which inventories a plurality of mobile cellular phones and selectively delivers one of the phones after reading a credit card number from a user supplied credit card. The phone is disposed within a receiving unit, which uniquely identifies the phone through its MIN or other identification number {see Bishop et al, column 3, lines 58-69+}. The transaction may be credited to a user upon verification of a user-entered password, such as driver's license, social security number or the like {see Bishop et al, column 4, lines 52-59}. A selected phone unit is delivered through door assembly 20 and returned through the same door assembly {see Bishop et al, column 4, lines 42-44}. The user-entered password is considered to meet the claimed identification code that uniquely identifies a user. The phone identification code is also considered to meet the claimed identification code that uniquely identifies a user because the phone identification code is matched with the user's name, address, driver's license number and other information



{also see McGregor et al, paragraph 0082}. Bishop et al suggests that a user-entered password is advantageous because it identifies whether a user renting a phone is authorized and insures only authorized diversion of telephone communication {see Bishop et al, column 8, lines 20-25}. As such, it would have been obvious to one of ordinary skill in the art, at the time of applicant's invention, to include an identification code that uniquely identifies a user in the system of McGregor et al because, as evidenced by Bishop et al, such limitations are required in automated phone rental operations using vending machines, to identify an authorized user renting a phone and insures only authorized diversion of telephone communication.

McGregor et al teach, the system has sufficient flexibility to be configured according to the requirements of the user {see McGregor, paragraph 0105}, such as limiting the initial number of calls, programming the phone to lock upon reading a predetermined dollar limit or upon reaching a certain date {see McGregor, paragraph 0112}. This is considered to read on the claimed "customizing operation of the selected mobile device to preset preferences". Also see column 8, lines 10-25 of Bishop et al wherein Bishop et al teach of querying a user for various options, including diversion of telephone communication {see Bishop et al, column 8, lines 20-25}. This is considered as functionally equivalent to the claimed customizing operation of the selected mobile device to preset preferences of the user. Bishop et al suggests that the requirement of a user-entered password when customizing operation of the selected phone to preset preferences of the user, is advantageous, because it insures that the preset preferences of the user, such as optional diversion of telephone communication is authorized {see

Bishop et al, column 8, lines 20-25}. As such, it would have been obvious to one of ordinary skill in the art, at the time of applicant's invention, to include user-entered password when customizing operation of the selected phone to preset preferences of the user, in the system of McGregor et al because, as evidenced by Bishop et al, it insures that the preset preferences of the user, such as optional diversion of telephone communication is authorized.

In claim 30, although McGregor et al teach, "centralizing allows implementation of various security measures for the local sites" {see McGregor et al, paragraph 0056}. Furthermore, Bishop et al was shown to teach of an automated vending machine 10 comprised of a cabinet accessible through locked doors (i.e. secure area) {see Bishop et al, column 4, lines 27-28}, which inventories a plurality of mobile cellular phones and selectively delivers one of the phones after reading a credit card number from a user supplied credit card. The transaction may be credited to a user upon verification of a user-entered password, such as driver's license, social security number or the like (i.e. identification code) {see Bishop et al, column 4, lines 52-59}. A selected phone unit is delivered through door assembly 20 and returned through the same door assembly {see Bishop et al, column 4, lines 42-44}. The crediting of the transaction based on the user-entered password in Bishop et al, is considered to meet the claimed granting a user access to the secure area based on the identification code. Bishop et al suggests that the use of a user-entered password in granting access to secured vending machines is advantageous because it identifies whether a user renting a phone is authorized. As such, it would have been obvious to one of ordinary skill in the art, at the time of

applicant's invention, to include granting a user access to the secure area (i.e. vending machine 10) based on the user-entered password in the system of McGregor et al because, as evidenced by Bishop et al, it insures that the user accessing the secure area is authorized.

In claims 31-32, the centralizing scheme which allows implementation of various security measures for the local sites" {see McGregor et al, paragraph 0056} makes the retail stores or rental stores or local service centers a secure room or enclosure. Further, the vending machine 10 of Bishop et al is also considered a secure area.

In claim 33, McGregor et al teach that the identification code is selected from the group consisting of numeric codes and alphanumeric codes {see McGregor et al, paragraphs 0106-0107 and paragraph 0133}.

In claim 34, McGregor et al further teach:

a plurality of docking stations, such as the interlink receiver 28 with a boot 32, located in the at least one secure area, wherein each docking station is coupled to the at least one system backbone (i.e. wired communication link 326 or wireless link via dedicated or switched public network) shown in Figure 9, and each mobile device is operatively configured to communicate to the host computer through a respective docking station {see McGregor et al, paragraphs 0054 and 0076+}.

In claim 35, McGregor et al further teach:

at least one wireless remote station, such as a service center or retail delivery system shown in Figure 9, coupled to the at least one system backbone (i.e. wireless network), wherein each mobile terminal is operatively configured to communicate to the

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host computer through the wireless remote station when the respective mobile device is not in the boot 32 {see McGregor et al, paragraph 0104}.

In claims 36-37, McGregor et al teach that the at least one host computer selects the mobile device to be placed in an operative state based on a preselected criteria, such as selectively programming phones for different service providers or reprogram phones when customers switch service providers or exchange phone units {see McGregor et al, paragraph 0104, lines 17-24.

In claim 38, McGregor et al teach that the operational mobile device is configured to be operational for a first interval (i.e. certain date), and upon expiration of the first interval the operational mobile device becomes inoperational or locked {see McGregor et al, paragraph 0112, lines 1-7}.

In claim 39, McGregor et al teach that the operational mobile device is configured to retain data within a memory area, such as an EPROM chip, for a second interval, described in paragraphs 0059 and 0061, and upon expiration of the second interval all data within the memory area is purged {see McGregor et al, paragraph 0085}.

In claim 40, McGregor et al teach that the second interval is inhibited if the mobile device is returned to the secure area prior to the expiration of the second interval {see McGregor et al, paragraph 0098}. This occurs when a customer is dissatisfied with the equipment operation, service or billing and the customer requests a service switch without waiting for the expiration of the second interval.

In claim 41, McGregor et al teach that the operational mobile device is configured to retain data within a memory area, such as an EPROM chip, for a second interval,

described in paragraphs 0059 and 0061, and upon expiration of the second interval all data within the memory area is purged {see McGregor et al, paragraph 0085}.

In claim 42, McGregor et al teach that the host computer monitors the port terminals 392 to detect when a mobile phone is inserted into a boot {see McGregor et al, paragraph [0122]} so that when a mobile phone is inserted into the boot, the mobile phone may be programmed with a new operating software. That is, the software in the phone is updated with the new software {see McGregor et al, paragraphs [0123] and [0127]-[0129]}. Further, when the mobile device moves to a new location, monitoring software patches (i.e. update phone software) can be downloaded to the selected mobile device (i.e. the mobile device that moved to the new location) {see McGregor et al, paragraph 0073}. The software patches stored in RAM (i.e. new mobile device operating software) then become the new operating software which logs calls, including time, date, and location when the call was made {see McGregor et al, paragraphs 0074-0075}.

In claim 43, McGregor et al teach that the host computer configures the selected mobile device's functionality based on the particular user {see McGregor et al, paragraph 0098}.

In claim 45, McGregor et al teach an alarm, such as a failure flag message that will prompt the rental operator to remove an inoperative mobile terminal selected by a user {see McGregor et al, paragraph 0065}.

In claim 46, although McGregor et al does not disclose "an audible alarm", it would have been obvious to one of ordinary skill in the art, at the time of applicant's

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invention, to include an audible alarm in the system of McGregor et al because such alarms aides visually impaired users means to diagnose a mobile device.

In claim 47, although McGregor et al does not disclose "a visual alarm", it would have been obvious to one of ordinary skill in the art, at the time of applicant's invention, to include prompting the rental operator with a visual alarm in the system of McGregor et al because visual alarms aides deaf operators in diagnosing a portable phone.

In claim 48, McGregor et al teaches that the system of claim 29, further comprises:

a communications link, such as a cellular telephone network described in paragraph 0072, between a first mobile device and a second mobile device, wherein messages are exchanged over the communications link between the user of the first mobile device and the user of the second mobile device.

In claim 49, McGregor et al teaches that the communications link is a direct communications link, such as a cellular network service providers link {see McGregor et al, paragraph 0090}, from the first mobile device to the second mobile device.

In claim 50, McGregor et al teach that the communications link is an indirect link, such as a communication link provided by other cellular network service providers {see McGregor et al, paragraph 0091}, from the first mobile device to the second mobile device.

In claim 51, McGregor et al teach that the indirect communications link includes communicating from the first mobile device to the host computer to the second mobile

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device. This occurs when the rental service location is also a cellular network service provider {see McGregor et al, paragraph 0090+ and paragraph 0098}.

In claim 52, McGregor et al teach that the host computer tracks the location of the mobile device as the mobile device moves between a plurality of cells (i.e. mobile device roams away from home base), described in paragraph 0071-0073, for the purpose of properly billing the mobile device wherever it travels, described in paragraph 0072.

In claim 53, McGregor et al teach that the host computer stores the location of the mobile device in a memory described in paragraph 0072+.

In claims 55 and 58, McGregor et al teach that the system of claim 29, further comprises:

a remote communication link, such as a wired modem link or wireless network link shown in Figure 9 and described in paragraph 0092, wherein at least one mobile device communicates to the host computer through the remote communication link. Also see McGregor et al, paragraph 0057.

In claims 56 and 57, McGregor et al teaches that the remote communication link is an Internet or intranet connection, such as a TCP/IP or X.25 link shown in Figure 9. Also see McGregor et al, paragraph 0117 regarding use of standard X21 network communication link.

In claim 54, McGregor et al does not disclose, "the host computer instructs the mobile device to emit an alert signal to assist in locating the mobile device". However, it would have been obvious to one of ordinary skill in the art, at the time of applicant's

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invention, to include such limitations in the tracking system of McGregor et al because this provides a phone distribution system means to instruct a user of a mobile device to return the mobile device upon reaching a certain date or predetermined dollar limit and thereby locate the mobile device {see McGregor et al, paragraph 0112}.

Claims 59-62 recites the limitations of claims 30-33 and therefore rejected for the same reasons.

Claims 1-12, 15 and 17-24, recite a method for practicing the system of claims 29-43 and 45-47 and therefore rejected for the same reasons.

Claims 25-28 recites a method for practicing the system of claims 30-33 and therefore rejected for the same reasons.

7. Claims 14 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2003/0008636 A1 {McGregor et al} in view of US Patent 4,951,308 {Bishop et al}, and further in view of US Patent 6,114,960 {hereinafter 'Hymel'}.

Regarding claim 44, McGregor et al does not disclose, "the mobile device displays advertisements based on a previous history of the particular user". The Examiner had initially taken an Official notice wherein the applicant requests that the Examiner produce authority that supports such assertion [see Remarks, page 11, 4<sup>th</sup> paragraph]. As such, Hymel et al is cited to teach of a mobile device, in the form of an SCR 122, for displaying advertisements based on user preferences {see Hymel, column 4, line 53-column 5, line 32}. Hymel suggests that such features, as claimed, is advantageous because providing free advertisement services increases a service



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providers sales volume of SCR's {see Hymel, column 1, lines 41-48+}. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of applicant's invention, to include such claimed features in the system of McGregor et al because, as evidenced by Hymel, providing free advertisement services increases a service provider sales volume of SCR's.

Claim 14 recites a method for practicing the system of claim 44 and therefore rejected for the same reasons.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent 5,774,053 issued to Porter and US Patent 6,344,796 issued to Ogilvie et al are cited because these patents teach of a system and method of granting a user access to a secure area (i.e. lockers and/or containers) that is accessible based on an identification code. See whole document.

### ***Office Contact Information***

9. Please note that the Examiner's supervisor has been changed.

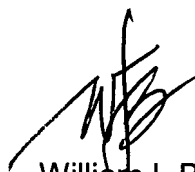
10. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to William Bangachon whose telephone number is **(571)-272-3065**. The Examiner can normally be reached from Monday through Friday, 9:00 AM to 5:30 PM.

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If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Brian Zimmerman can be reached on **(571)-272-3059**. The fax phone numbers for the organization where this application or proceeding is assigned is **571-273-8300** for regular and After Final formal communications. The Examiner's fax number is **(571)-273-3065** for informal communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866-217-9197** (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4700.



William L Bangachon  
Examiner  
Art Unit 2635



**BRIAN ZIMMERMAN**  
**PRIMARY EXAMINER**

May 10, 2007